

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
Vugteveen Lawn Service, Inc	NO. 2014-AQ- <i>26</i>

TO: Vugteveen Lawn Service, Inc
Kevin Vugteveen, Registered Agent
20675 Nautica Drive
Spirit Lake, Iowa 51360

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Vugteveen Lawn Service, Inc (Vugteveen Lawn Service) for the purpose of resolving violations pertaining to illegal open burning of solid wastes. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Amber Wolf
Iowa Department of Natural Resources
Field Office No. 3
1900 N. Grand
Gateway North, Suite E17
Spencer, Iowa 51301
Phone: 712-262-4177

Relating to legal requirements:
Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515-725-9551

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued

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pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. On June 3, 2014, DNR Field Office No. 3 received a complaint that at 7:15 a.m. that day very black smoke was coming from an open burn pile located immediately west of Vugteveen Lawn Service.

2. On June 6, 2014, DNR Environmental Specialist Amber Wolf investigated and found an active burn pile located just west of the Vugteveen Lawn Service commercial building. The burn pile contained landscape waste, railroad ties, and metal barrels.

3. During the June 6 site visit, Ms. Wolf observed that the open burning appeared to be from a different burn pile than the June 3 open burn. Both fires appeared to have consumed most of the combustible materials. Pictures were taken at the site by Ms. Wolf.

4. While at the site, Ms. Wolf spoke with a Vugteveen Lawn Service office employee who confirmed that Vugteveen Lawn Service was responsible for the open burning at the site. Later that afternoon, on the phone, Ms. Wolf spoke with a mechanic at Vugteveen Lawn Service who also confirmed the burn was the responsibility of Vugteveen Lawn Service, and stated that he "was only doing what he was told." Ms. Wolf informed this person that open burning is illegal and that Vugteveen Lawn Service should expect a letter from DNR and that legal enforcement would be pursued. On July 25, 2014, a Notice of Violation (NOV) letter was sent to Mr. Vugteveen, documenting the open burning violations.

5. Vugteveen Lawn Service has a history of violating the rules prohibiting open burning. Vugteveen Lawn Service and Kevin Vugteveen have been informed of the prohibition against open burning several times since 2004. On April 2, 2004, DNR Field Office No. 3 received a complaint that open burning was occurring at Vugteveen Lawn Service. On April 2, 2004, the complaint was investigated by DNR Environmental Specialist Nate Young. At the site, Mr. Young observed the burning of yard and landscape waste. Also at the site, Mr. Young discussed the prohibition against open burning with Kevin Vugteveen and Vugteveen Lawn Service employee Brent Lacour. On April 5, 2004, a NOV letter was issued to Vugteveen Lawn Service for open burning.

6. A second NOV letter was issued in August 2006, following observation by Mr. Young on August 3, 2006, of further open burning at the Vugteveen Lawn Service facility.

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7. On August 8, 2011, DNR Field Office No. 3 received a complaint of open burning occurring at Vugteveen Lawn Service. The complaint was investigated by DNR Environmental Specialist Senior Byron Whiting on August 8, 2011. At the site, Mr. Whiting observed the open burning of landscape timbers and wood pallets. An August 9, 2011, letter was sent by Mr. Whiting to Kevin Vugteveen and Vugteveen Lawn Service, and explained that open burning is prohibited in the State of Iowa.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 Iowa Administrative Code (IAC) chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The open burning that occurred in this case demonstrates a violation of this provision. The open burning of trade waste, which occurred in this case, is specifically prohibited.

V. ORDER

THEREFORE, DNR orders and Vugteveen Lawn Service agrees to the following:

1. Vugteveen Lawn Service shall pay a penalty of \$5,000.00 within 30 days of the date this administrative consent order is signed by the Director, and

2. Within 30 days of the date of this administrative consent order, Vugteveen Lawn Service shall provide to DNR Field Office No. 3 written documentation that appropriate recycling or disposal of the solid waste at the site identified in this order has occurred, and

3. Vugteveen Lawn Service shall cease all illegal open burning of combustible materials at any location in the State of Iowa, and shall comply in the future with the regulations concerning open burning.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$5,000.00 is assessed by this administrative consent order. The penalty

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must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – During June 2014, Vugteveen Lawn Service saved time and money on transportation and landfill disposal fees. DNR has evidence that the open burn that was the subject of the June 3, 2014, complaint and the open burn observed by Ms. Wolf during the June 6, 2014, investigation were two different fires. Since the fires had consumed most of the combustible materials, the total volume or tonnage of the waste materials is unknown. Further, Vugteveen Lawn Service has saved time and money over a period of years on transportation and landfill disposal fees. Therefore, the economic benefit for failing to properly dispose of all materials is assessed at \$1,000.00, and that amount is assessed for this factor.

Gravity of the Violation – The open burning of solid waste can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Further, illegal open burning threatens the integrity of DNR's environmental programs and efforts to protect the State of Iowa's valuable natural resources. Therefore, \$1,500.00 is assessed for the gravity of the violations.

Culpability – It is the responsibility of Vugteveen Lawn Service to remain knowledgeable of the DNR's rules and to abide by them. Since 2004, and prior to the June 2014 open burning incidents, DNR had issued at least three written warnings to Vugteveen Lawn Service for open burning. Kevin Vugteveen repeatedly has been informed of DNR's rules prohibiting open burning, and he has displayed a blatant disregard for them. For the above reasons \$2,500.00 is assessed for culpability.

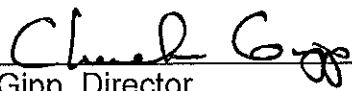
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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Vugteveen Lawn Service. For that reason, Vugteveen Lawn Service waives its right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 3rd day of
November, 2014.



Kevin Vugteveen
Vugteveen Lawn Service, Inc

Dated this 27 day of
October, 2014.

DNR Field Office 3; Anne Preziosi; VII.C.2